

W. H. Ferguson, Co. 1st

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

DATE: July 7, 1978

MATTER OF: John J. Doyle - Waiver of Overpayments of Pay

DIGEST: Employee elected optional life insurance coverage and deductions were made until agency, through administrative error, stopped deducting optional insurance premiums. The employee's request under 5 U.S.C. 5584 for waiver of the resulting erroneous overpayments of pay is denied since the record indicates that the employee failed to notice or question the decrease in deductions for insurance which were shown on his Earnings and Leave Statements. In addition, employee continued to be covered by insurance during the period premiums were not properly deducted.

By letter dated December 25, 1977, Mr. John J. Doyle, a former employee of the U.S. Public Health Service Hospital in Baltimore, Maryland, Department of Health, Education, and Welfare (HEW), has appealed the action of our Claims Division in a letter dated December 7, 1977, which denied his application for waiver under the provisions of 5 U.S.C. 5584 (1976), of erroneous overpayments of pay in the amount of \$1,728.50.

The record shows that on February 12, 1968, Mr. Doyle elected to be covered by both regular and optional Federal Employees Group Life Insurance (FEGLI). Proper deductions for FEGLI were made through the pay period ending January 23, 1971. Beginning with the pay period ending February 6, 1971, through the pay period ending November 8, 1975, the agency, through administrative error, failed to deduct the premium for optional FEGLI. After a department-wide audit of pay records uncovered this failure to deduct optional FEGLI from Mr. Doyle's salary, proper deductions of FEGLI were made for the pay period ending November 22, 1975, through the pay period ending December 20, 1975, when Mr. Doyle's optional FEGLI coverage was discontinued at his formal request on Standard Form No. 176 dated December 15, 1975.

The Claims Division's denial of waiver was based upon the fact that since Mr. Doyle had been regularly receiving Earnings and Leave Statements during the period in question, he was partially at fault in this matter, and he should have noticed the errors by examining those earnings statements.

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The authority for the waiver of claims for overpayments of pay and allowances of more than \$500 is contained in 5 U.S.C. 5584 (1976). That section provides that where collection of such a claim would be against equity and good conscience and not in the best interests of the United States, it may be waived by the Comptroller General of the United States unless:

" * * * in his opinion, there exists in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim * * *."

Generally, if an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documents for accuracy or otherwise fails to take corrective action he is not without fault and waiver will be denied. Matter of Arthur Weiner, B-184480, May 20, 1976; and Matter of Roosevelt W. Royals, B-183822, June 1, 1977.

An employee has the responsibility to verify the correctness of the payments he receives, and where a reasonable person would have made an inquiry but the employee did not, then he is not free from fault and the claim may not be waived. Matter of Simon B. Queda, B-189385, August 10, 1977.

In Mr. Doyle's case, his Earnings and Leave Statement, form OS 340, for the pay period ending January 9, 1971, showed a deduction of \$8.53 for FEGLI and this deduction increased to \$9.34 for the following pay period as a result of a general salary increase. However, for the next pay period ending February 6, 1971, there was a substantial decrease in the amount deducted for FEGLI to \$3.30. Deductions were made at the rate of \$3.30 until the pay period ending March 18, 1972, when the deduction was increased to \$3.58 as the result of a general salary adjustment. Thereafter, the deductions for FEGLI increased in modest increments as the result of general salary adjustments and a step increase.

In his letter dated December 25, 1977, Mr. Doyle states that the FEGLI deductions in the \$3.30-\$3.58 range indicated on his Earnings and Leave Statements did not provide him with any indication of an administrative error with regard to the amount of the

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deductions as he had requested sometime in 1970 that his optional FEGLI coverage be cancelled. However, there is nothing in the administrative record which shows that Mr. Doyle submitted to the agency a written request to discontinue his coverage of optional FEGLI prior to his cancellation request of December 15, 1975. Also, Mr. Doyle has not provided any documentation which would establish that he had requested that his optional FEGLI coverage be discontinued at or about the time that his Earnings and Leave Statements began to show a substantial decrease in the amount of the deductions. We have been informally advised by HEW that there is nothing in Mr. Doyle's files which would show that he submitted a request to the agency prior to his request in December 1975 that his optional FEGLI coverage be discontinued. We also note that in a letter dated January 20, 1977, to the Acting Personnel Officer of the USPHS Hospital in Baltimore, Mr. Doyle did not allege that he had requested the cancellation of his optional FEGLI insurance prior to or during the period of the erroneous overpayments. In fact Mr. Doyle asserted that he was "not aware that the deductions for FEGLI had ceased." Accordingly, in the absence of any corroborative evidence, we cannot accept Mr. Doyle's contention that he had requested a cancellation of optional FEGLI at the time the amount of his deductions for FEGLI decreased.

Mr. Doyle also contends that he should be relieved from liability due to the fact that the agency has made some errors on some of his records. As an example he states that on an SF-50 dated January 8, 1970, which implemented a pay system change, the block indicating FEGLI coverage showed that he was covered by only regular FEGLI, whereas his Earnings and Leave Statements for the pay period ending January 10, 1970, indicated that he was covered by both regular and optional FEGLI. The discrepancy in agency records noted by Mr. Doyle is not relevant to the underdeductions in his FEGLI premiums which began in February 1971 and in no way relieves him of the responsibility of verifying the information provided in his Earnings and Leave Statements.

In accordance with the above, we must conclude that Mr. Doyle was at least partly at fault in failing to notice or to question the erroneous failure to deduct the cost of his optional FEGLI which was reflected in the substantial decrease in the deductions for FEGLI as shown on his Earnings and Leave Statements for the pay periods beginning with the pay period ending February 6, 1971. See Matter of Fred P. McCleskey, B-187240, November 11, 1976; and Guedea, supra.

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In addition we cannot say that collection of the claim would be against equity and good conscience as Mr. Doyle's coverage by optional FEGLI continued during the period that deductions therefor were not made as the result of the administrative error. See 5 C.F.R. 871.203 and 871.204.

In view of the above, we must sustain the determination of our Claims Division to deny the requested waiver.

R. F. K. 11w
Deputy Comptroller General
of the United States